

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 260 of 1984
WITH
INCOME TAX REFERENCE NO.333 of 1984

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CHEMI GOET LTD.

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE K.M.MEHTA

Date of decision: 20/12/1999

ORAL (COMMON) JUDGEMENT

(PER PATEL,J):

1. The Income Tax Appellate Tribunal (for short "Tribunal" hereinafter) has made these two reference under the provisions contained in the Income Tax Act(hereinafter referred to as "the Act") for the Assessment Year 1977-78 and the Assessment Year 1978-79. In both the references, the question being common, they are disposed of by this common order.

2. For the Assessment Year 1977-78, the question of law referred is as under:

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the expenses of Rs.29,200/- incurred by the assessee for setting up a new unit was allowable as a revenue expenditure?"

3. So far as the the Assessment Year 1978-79 is concerned, the question referred for the opinion of this court is as under:

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the expenses of Rs.1,06,768/- incurred by the assessee for setting up a new unit was allowable as a revenue expenditure?"

4. The assessee, a Limited Company engaged in manufacture of metalized polyester film was assessed for the Assessment Year 1977-78 wherein the total claim by way of revenue expenditure to the tune of Rs.29,200/- was the subject matter of discussion between the members of the Tribunal whether it should be considered as revenue expenditure or capital expenditure, and on difference of opinion, the matter was referred to the third member, who after hearing the parties, namely, the assessee and the departmental representative decided the matter in favour of the assessee. For the Assessment Year 1978-79 the question referred to is for different amount. The Assessing Officer did not accept the contention that the amount was required to be spent for the purpose of extension of the unit in question. The Assessing Officer was of the view that that was the new unit and therefore the amount spent, i.e.Rs.29,200/- was considered as capital expenditure. From the finding of the Tribunal, it clearly transpires that the learned members who

referred the matter were in agreement that the Kandla Project undertaken by the assessee was merely an extension of the existing business, but were not in agreement whether the expenditure was revenue expenditure or not. This has been specifically referred in para 8 of the decision rendered by the member of the Tribunal on a reference. Thus, it is very clear that the authorities based their conclusion to disallow the impugned expenditure on the ground that the Kandla Project undertaken by the assessee was a new business and not extension of present business. However, in view of the finding recorded by the Tribunal it is very clear that it was merely an extension of existing unit.

5. In view of the finding recorded by the Tribunal as aforesaid, we would not be in a position to answer the question in favour of the revenue, more particularly, the decision rendered by the learned Member is unassailable in view of the pronouncements of the Apex Court in Commissioner of Income Tax vs Prithvi Insurance Co.Ltd (1967) 63 ITR 632 and Produce Exchange Corporation Ltd vs Commissioner of Income Tax (1970) 77 ITR 739 which are considered by the learned Member.

6. In the case of CIT, GUJARAT II vs ALEMBIC GLASS INDUSTRIES LTD reported in 103 ITR 715 the Division Bench of this court has laid down the test to find out whether it is a different business or only another unit of the same business. The company having factory at Baroda established a unit at Bangalore. The Assessing Officer held that it was a new business and as production had not commenced the payment of interest could not be considered as revenue expenditure. In that case there was no dispute that the business organisation, administration and fund of both the units of the assessee, namely, the unit at Baroda and the unit at Bangalore were common. The court also pointed out that the new unit at Bangalore was nothing but an expansion of existing business. There was complete interaction, interlacing and interdependence of both the units, which is the test laid down for determining whether two lines of business constitute the "same business" within the meaning of section 24(2) by the Supreme Court in the case of CIT vs Prithvi Insurance Co.Ltd 63 ITR 632 and again approved by the Supreme Court in Production Exchange Corporation Ltd vs CIT reported in 77 ITR 739. There is a finding recorded by the members of the Tribunal that the Kandla Project undertaken by the assessee was merely an extension of the existing business. They did not agree on the question whether the expenditure would be in the nature of capital or revenue.

7. Thus, in view of what is stated hereinabove, the amount spent by the company will have to be treated as revenue expenditure, and accordingly, our answer in both the matters would be in affirmative, i.e. in favour of assessee and against the revenue. No order as to costs.